

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

**DIVISION OF WATER RIGHTS
PERMIT FOR DIVERSION AND USE OF WATER**

PERMIT 21079

Application 30362 of **Bay City Flower Company, Inc.**
P.O. Box 186
Half Moon Bay, CA 94019

filed on **May 3, 1994**, has been approved by the State Water Resources Control Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source	Tributary to
1 and 2. Unnamed Streams	the Pacific Ocean
3. Unnamed Stream	Butano Creek thence Pescadero Creek thence the Pacific Ocean
4. Unnamed Drain	the Pacific Ocean

2. Location of point of diversion

By California Coordinate System in Zone 3	40-acre subdivision of public land survey or projection thereof	Section Projected	Township	Range	Base and Meridian
POD #1; North 273,100 feet and East 1,447,250 feet	NE¼ of SW¼	16	8S	5W	MD
POD #2; North 272,900 feet and East 1,446,500 feet	NE¼ of SW¼	16	8S	5W	MD
POD #3; North 274,500 feet and East 1,446,750 feet	SE ¼ of SW ¼	16	8S	5W	MD
POD #4; Diversion to Offstream Storage; North 273,000 feet and East 1,446,350 feet	NE ¼ of SW ¼	16	8S	5W	MD
Offstream Storage Pond 4	NE¼ of SW¼	16	8S	5W	MD

County of **San Mateo**

3. Purpose of use	4. Place of use	Section Projected	Township	Range	Base and Meridian	Acres
Fish and Wildlife Enhancement	Water Storage at Pond Nos. 1, 2, 3 & 4	16	8S	5W	MD	
Irrigation	SE¼ of NW ¼	16	8S	5W	MD	12
	SW¼ of NE ¼	16	8S	5W	MD	1
	NW¼ of SW ¼	16	8S	5W	MD	1
	NE¼ of SW ¼	16	8S	5W	MD	32
	SE¼ of SW ¼	16	8S	5W	MD	9
	SW¼ of SE ¼	16	8S	5W	MD	1
	NW¼ of SE ¼	16	8S	5W	MD	11
					Total	67

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 81 acre-feet per annum. The collection seasons are from November 1 of each year to May 1 of the succeeding year from the Unnamed Streams (POD #1 and POD #2) and Unnamed Drain (POD #4) tributary to Pacific Ocean and from December 1 of each year to April 14 of the succeeding year from Unnamed Stream (POD #3) tributary to Butano Creek. Storage shall not exceed 20 acre-feet per annum in Water Storage Pond No. 1, 25 acre-feet per annum in Water Storage Pond No. 2, 6 acre-feet in Water Storage Pond No. 3, and 30 acre-feet per annum in offstream Water Storage Pond No. 4. This permit does not prevent the on-site storage and beneficial use of additional water that might be purchased or otherwise legally acquired by the Permittee.

(0000005D)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0000005I)

The maximum rate of diversion to offstream storage shall not exceed 0.5 cubic foot per second.

(0000005J)

The total capacity of the reservoirs covered under this permit shall not exceed 81 acre-feet.

(0000005N)

6. Complete application of the water to the authorized use shall be made by December 31, 2010.

(0000009)

7. Permittee shall install and maintain an outlet pipe of adequate capacity in each dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before storing water in the reservoirs, permittee shall furnish evidence which substantiates that the outlet pipes, or alternative facilities, has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043bp)

8. Within 90 days from the date of this permit, Permittee shall prepare and submit for approval to the Chief, Division of Water Rights, a water management program designed to ensure no diversion to storage of unappropriated water outside the authorized season of diversion, or in excess of the maximum quantity specified in this permit. The program shall be prepared by a duly licensed Civil Engineer. Following approval of the water management program by the Chief, Division of Water Rights, Permittee shall carry out the approved program elements at all times.

(0200300)

9. Permittee shall at all times manage the diversion and use of water under this permit to prevent any discharge of wastes into adjacent surface water drainage or to ground water in amounts that would exceed existing state water quality standards. No discharge of wastes to adjacent surface water drainage or to ground water shall be made in amounts requiring a state waste discharge permit, unless a state waste discharge permit is first obtained from the California Regional Water Quality Control Board, San Francisco Bay Region.

(0290101)

10. Permittee shall at all times manage and operate the Water Recirculation Ponds to ensure that no chemical residue contained in these ponds is discharged to adjacent surface water drainage or to ground water in an amount that would exceed existing state water quality standards. No discharge of chemical residues from the Water Recirculation Ponds to adjacent surface water drainage or to ground water shall be made in amounts requiring a state waste discharge permit, unless a state waste discharge permit is first obtained from the California Regional Water Quality Control Board, San Francisco Bay Region.

(0290101)

11. Within 90 days from the date of this permit, Permittee shall develop and submit for approval to the Chief, Division of Water Rights, a water quality monitoring and reporting program designed to ensure compliance with the no waste discharge provisions of this permit. Minimum elements of this program shall include:

- (a) Periodic sampling and analysis of surface water drainage (including overflow from Water Storage Pond No. 2) at times and locations selected by a person (Monitor) mutually agreeable to both the Permittee and Chief, Division of Water Rights;

- (b) Providing the Monitor unrestricted access to records of pesticide and fertilizer usage in the greenhouses and at the outside nursery facilities;
- (c) Sampling and analysis to be conducted by a State-certified water analysis laboratory;
- (d) Constituents analyzed to include residues or breakdown products of pesticides and fertilizers currently being used in the greenhouses and at the outside nursery, based upon the Monitor's review of current pesticide and fertilizer usage records;
- (e) Following completion of each water quality analysis, preparation of a report on the results by the water analysis laboratory and submittal of copies of the report by the Permittee to the Chief, Division of Water Rights, and, upon request, to the Pescadero Municipal Advisory Council (or its successors in interest);
- (f) Maintenance of a permanent record of all data obtained under the monitoring and reporting program, to be made available upon request of the Chief, Division of Water Rights.

Following approval of the water quality monitoring and reporting program by the Chief, Division of Water Rights, Permittee shall carry out the approved program for a period of at least five years from the date of approval. Appropriate adjustments may be made to the monitoring program when required by the Chief, Division of Water Rights. After five years from the date of initial approval, Permittee may file a petition with the Chief, Division of Water Rights, to discontinue the water quality monitoring and reporting program.

(0490300)

12. For the protection of the San Francisco Garter Snake (*Thamnophis sirtalis tetrataenia*) and the California Red-Legged Frog (*Rana aurora draytoni*), Permittee shall:

- (a) Establish and maintain, undisturbed, a strip of natural aquatic, riparian and upland vegetation around Water Storage Pond No. 1 and around the east side of Water Storage Pond No. 2, in accordance with the areas identified in Figure A attached to this permit;
- (b) Obtain approval from the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, and the California Department of Fish and Game prior to commencing any sediment/debris removal operations involving Water Storage Pond No. 1;
- (c) Refrain from disturbing the fringe of emergent (wetland) vegetation in Water Storage Pond No. 1 during sediment/debris removal operations;
- (d) Maintain at all times a minimum pool in Water Storage Pond No. 1 of at least 5 acre-feet;
- (e) Refrain from drawing down the water level in Water Storage Pond No. 1 until after water has first been drawn down to dead storage levels in Water Storage Ponds No. 2, No. 3 and No. 4;
- (f) Install and maintain a screen on the pumping facility at Water Storage Pond No. 1, acceptable to the U.S. Fish and Wildlife Service and the California Department of Fish and Game, which is designed to prevent the entrainment of immature Red-legged frogs and San Francisco Garter Snakes into the pump intake;

- (g) Periodically remind nursery employees not to harm snakes and frogs utilizing the natural riparian habitat associated with Water Storage Ponds No. 1 and No. 2, and not to disturb the habitat itself.

(0400500)

13. Within one year from the date all required State and local permits have been obtained, Permittee shall make all necessary modifications and repairs to the existing dam and reservoir at Water Storage Pond No. 2 to ensure that the dam will not fail under future flood flow conditions or discharge sediments or other pollutants to the stream channel downstream of the dam. The plans and specifications for the necessary modifications and repairs shall be prepared by a duly licensed Civil Engineer. The actual construction work shall be limited to the dry season and shall be carried out under the direct supervision of a duly licensed Civil Engineer. Following completion of construction, Permittee shall at all times maintain and operate Water Storage Pond No. 2 to ensure that the dam will not fail and that no discharge of sediments or other pollutants will be allowed into the stream channel downstream of the dam.

(0520300)

14. Prior to the commencement of construction of proposed Water Storage Pond No. 4, Permittee shall obtain all appropriate grading permits, coastal development permits and other permits required by the County of San Mateo. The plans and specifications for construction of Water Storage Pond No. 4 shall be prepared by a duly licensed Civil Engineer. The actual construction work shall be limited to the dry season and shall be carried out under the direct supervision of a duly licensed Civil Engineer.

(0520300)

15. Within one year from the date of this permit, Permittee shall prepare and submit for approval to the Chief, Division of Water Rights, a comprehensive erosion control and stormwater management plan designed to ensure that during flood flow conditions, erosion of soils and sediments into surface water drainages or onto neighboring properties is prevented. The plan shall be prepared by a duly licensed Civil Engineer, certified professional Soil Erosion and Sediment Control Specialist, or the Natural Resources Conservation Service. Following approval of the erosion control plan by the Chief, Division of Water Rights, Permittee shall carry out the approved plan.

(0490300)

16. Permittee shall allow personnel of the California Department of Fish and Game or designated representative(s) reasonable access to the water storage pond sites, water distribution facilities, and the designated places of water use, for the purpose of verifying compliance with terms and conditions of this permit.

(0400300)

17. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some to the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure

and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.

(00380500)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD
ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- (A) Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- (B) The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (C) Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
- (D) Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- (E) Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that

such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(F) The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(G) This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

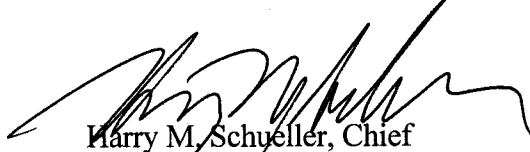
Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for

purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

JAN 08 2001

STATE WATER RESOURCES CONTROL BOARD



Harry M. Schueller, Chief
Division of Water Rights